



When recorded return to:  
Sierra Homebuilders, LLC  
425 N 2450 W  
Tremonton UT 84337

Parcel No(s).

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THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – RIVER VALLEY TOWNHOMES PHASE 8 (this “**Declaration**”) is made as of the date signed below by Sierra Homebuilders, LLC, a Utah limited liability company (“**Declarant**”).

#### **ARTICLE I** **Definitions**

**1.1** “**Act**” means the Community Association Act, Title 57, Chapter 8a of the Utah Code Ann., as amended.

**1.2** “**Additional Land**” means any real property which Declarant may elect to make part of the Townhome Community in the future.

**1.3** “**Assessment**” means any charge imposed or levied by the Association on or against an Owner or Parcel pursuant to the terms of the Governing Documents or applicable law, including without limitation: (1) annual assessments; (2) special assessments; and (3) individual assessments as set forth below.

**1.4** “**Association**” means the River Valley HOA, Inc., a Utah nonprofit corporation or any successor incorporated or unincorporated association of the Owners acting under this Declaration.

**1.5** “**Board**” means the Board of Directors of the Association.

**1.6** “**Bylaws**” means the Bylaws of the Association as they may exist and/or be amended from time to time, initially in the form attached hereto as **Exhibit C** and incorporated herein by this reference.

**1.7** “**Common Area**” means everything included within the Project, excluding the individual Dwelling Units, as identified on the Plat.

**1.8** “**Common Expenses**” means expenses of administration, maintenance, repair, or replacement of the Common Areas, and the expenses incurred by the Association in carrying out the responsibilities and duties mandated by the Governing Documents, including, without limitation, fulfilling all obligations of the Association under any agreements entered into by the Association.

**1.9** “**Declarant**” means Sierra Homebuilders, LLC, a Utah limited liability company, and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Community; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.

**1.10**    "**Design Guidelines**" means the Design Guidelines and Construction Rules adopted by the Board from time to time, in the Board's sole discretion.

**1.11**    "**Dwelling Unit**" means a single family attached home, commonly referred to as a Townhome, constructed on a Parcel within the Townhome Community. The Dwelling Unit shall include, without limitation, the roofs and all exterior surfaces, exterior trim, gutters, downspouts, and foundations. The Dwelling Unit shall also include any mechanical equipment and appurtenances located within any one Dwelling Unit, or located without said Dwelling Unit but designed to serve only that Dwelling Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Dwelling Unit or serving only the Dwelling Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Dwelling Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the building within which the Dwelling Unit is located shall be deemed to be a part of the Dwelling Unit.

**1.12**    "**FHA**" means the Federal Housing Administration.

**1.13**    "**FHLMC**" means the Federal Home Loan Mortgage Corporation.

**1.14**    "**Fine**" means any charge levied against an Owner for violations of any of the Governing Documents. Fines shall be enforced and collected consistent with the Act and the Governing Documents, and may be collected as an unpaid assessment.

**1.15**    "**First Mortgage**" means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

**1.16**    "**First Mortgagee**" means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage.

**1.17**    "**FNMA**" means the Federal National Mortgage Association.

**1.18**    "**Governing Documents**" means any and all written instruments by which the Association may exercise powers or manage, maintain, or otherwise affect the Townhome Community, including Articles of Incorporation, Bylaws, Plat(s), this Declaration, rules and regulations, and architectural or design guidelines.

**1.19**    "**Improvement**" means any improvement now or hereafter constructed within the Townhome Community and includes anything that is a structure and appurtenances thereto of every type and kind, including but not limited to any Dwelling Unit, clubhouse, building, shed, guest house, casita, pergola, hot tub, screening wall, accessory building, detached garage, radio or other antenna, fence, or wall.

**1.20**    "**Limited Common Area**" means a portion of the Common Area specifically designated as a Limited Common Area in this Declaration or the Plat(s).

**1.21**    "**Manager**" or "**Managing Agent**" means the person or entity retained by the Association to manage the Townhome Community according to the direction of the Board

**1.22**    "**Mortgage**" means a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

**1.23** “**Mortgagee**” means a beneficiary or holder of a Mortgage.

**1.24** “**Municipal Authority**” means any applicable governmental entity or municipality that has jurisdiction over all or some part of the Townhome Community.

**1.25** “**Occupant**” means any Person other than an Owner, who has actual use, possession or control of a Parcel Dwelling Unit or any portion thereof, or any other Improvement located within the Townhome Community.

**1.26** “**Owner**” means one or more Persons who hold the record title to any Parcel or Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. Each Owner is also a Member of the Association.

**1.27** “**Parcel**” means one or more legally subdivided lots or parcels of land within the Community that is intended for sale and development as a Dwelling Unit.

**1.28** “**Party Wall**” means a wall, including without limitation a foundation wall, that forms part of a Dwelling Unit and is located on or adjacent to a boundary line between two or more adjoining Parcels owned by more than one Owner and is used or is intended to be used by the Owners of the benefitted Dwelling Units, which wall may be separated by a sound board between two or more Dwelling Units.

**1.29** “**Person**” means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

**1.30** “**Period of Administrative Control**” means the period during which the Declarant (or a successor in interest) retains authority to appoint or remove members of the Board and is the time between the date of recordation of this Declaration and the date on which administrative control of the Association is turned over to the Owners as provided below.

**1.31** “**Plat**” means final approved subdivision plat recorded, or to be recorded, at the Recorder's Office of Box Elder County, State of Utah, as the same may be amended or substituted, together with any plat subsequently recorded for an additional phase of the Project. Attached as **EXHIBIT B**.

**1.32** “**Property**” or “**Project**” means all of the real property, and appurtenant interests, particularly described in the attached **EXHIBIT A**, including all Units and Common Areas.

**1.33** “**Record**,” “**Recording**,” “**Recorded**” and “**Recordation**” means placing or having placed an instrument of public record in the official records of Box Elder County, Utah.

**1.34** “**Regulated Modification**” means (without implication that any particular matter is permitted or prohibited by this Declaration) the commencement, placement, construction, reconstruction or erection of, or modification, alteration, or addition to, any building, structure, Improvement, thing or device, and any usage thereof, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing within the Townhome Community as of the date of establishment of the Regulated Modification, excluding any such matters or activities conducted by Declarant, but including by way of illustration and not of limitation:

**1.34.1** any building, garage, porch, shed, bathhouse, swimming pool, hot tub, pool house, coop or cage, covered or uncovered patio, children's play fort or play set and any other recreational devices or equipment used outside of a Dwelling Unit, fence,

wall or other screening device, curbing, paving, wall, trees, shrubbery and any other landscaping, fountains, statuary, lighting fixtures, signs or signboard, or any temporary or permanent living quarters, and any other temporary or permanent modification or alteration;

- 1.34.2 any other building, structure, Improvement, thing or device, and any activities related thereto and any usage thereof, as specified from time to time by applicable Design Guidelines, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing in the Townhome Community.
- 1.34.3 any modifications to the structural, mechanical, or electrical elements, systems or components of a Dwelling Unit.

1.35 **“Rules and Regulations”** means those rules and regulations adopted by the Board from time to time that are deemed necessary or prudent by the Board for the enjoyment, operation or governance of the Townhome Community.

1.36 **“Single Family”** means a group of one or more Persons, each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, who maintain a common household in a Dwelling Unit and as otherwise defined by the Municipal Authority and applicable law.

1.37 **“Townhome Community” or “Community”** means the real property located in Box Elder County, State of Utah, which property is described in the attached **Exhibit A**. The Townhome Community is generally known as the River Valley Townhomes.

1.38 **“Turnover Meeting”** means the meeting at which the Declarant turns over administrative control of the Association to the Owners pursuant to this Declaration.

## **ARTICLE II** **Declaration**

2.1 **Declaration.** All of the real property in the Townhome Community is and will at all times be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, the Governing Documents, and all agreements, decisions and determinations made by the Board or Association, which are for the purpose of protecting the desirability of and which will run with land and which will be binding on all parties having any right, title, or interest in the Townhome Community or any part thereof, their heirs, successors, successors-in-title, and assigns, and will inure to the benefit of each Owner. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and all other provisions of the Governing Documents of the Association. In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Townhome Community and evidences his, her or its agreement that all the restrictions, conditions, covenants, Rules and Regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration is mutually beneficial, prohibitive and enforceable by the Declarant and all Owners. This Declaration must not be construed to prevent the Declarant from

dedicating or conveying portions of the Townhome Community, including but not limited to streets or roadways, for uses other than as a Parcel or Dwelling Unit subject to the provisions of this Declaration.

**2.2 Conflicts with Law.** If there is any conflict between this Declaration and the requirements of the applicable ordinances of any Municipal Authority, the more restrictive provisions will control.

**2.3 Readjustment of Parcel Boundaries.** Declarant reserves the right to effectuate minor realignment and adjustment of the boundary lines between Parcels that are owned by Declarant for purposes of proper configuration and final engineering of the Townhome Community; provided that any such realignment and adjustment does not affect any existing Dwelling Unit or Improvement (other than landscaping) on the affected Parcel. The authority to realign and adjust such Parcel boundary lines shall be exclusively reserved to the Declarant, in their sole and reasonable discretion, subject to the other provisions of this Section 2.3. All Owners specifically acknowledge and agree that they will cooperate with Declarant to effectuate such minor realignment and adjustment of the Parcel boundary lines as reasonably requested by the Declarant such as through signing an amended plat. Further, all Owners acknowledge and agree that no amendment to this Declaration or the subdivision plat shall be required to effectuate any Parcel boundary line adjustments so long as such adjustments are made pursuant to applicable law. More particularly, boundary line adjustments between adjacent Parcels may be executed upon the approval of the appropriate Municipal Authority and upon recordation of an appropriate deed.

**2.4 Right of Entry.** During the Period of Administrative Control, the Declarant and Association, and after the Turnover Meeting, the Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon or into the Parcels for the purpose of: (1) determining whether or not the Parcel is in compliance with the Governing Documents, (2) determining whether the use of the Parcel is causing damage or harm to the Common Areas, (3) removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Parcel in violation of this Declaration, or (4) performing maintenance referred to herein. No such entry or actions by the Association shall be deemed to constitute a trespass or otherwise create any right of action for damage or otherwise in the Owner of such Parcel. The Association will indemnify, defend, and hold the Owner harmless from and against all claims, damages, liabilities or actions arising out of the Association's entry upon or into any Parcel.

**2.5 Utility Easements.** During the Period of Administrative Control, the Declarant and Association, and after the Turnover Meeting, the Association, and at all times any public or private utility provider shall have an easement through all Parcels and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary as determined by the Board. The Board may grant or create from time to time, on behalf of the Association and on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Area. Within any easement, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. The easement area within each Parcel and all improvements therein shall be maintained continuously by the person or entity responsible for maintenance of such Parcel in accordance with the terms herein, except for those improvements for which a public authority or utility provider is responsible. Each Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Parcels and serving his or her Parcel.

**2.6 Common Areas.** All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas subject to this Declaration and any applicable rules, regulations, or other requirements imposed by the Association from time to time. The Owner of any appurtenant Parcel adjoining logically and spatially associated with any designated Limited Common Area has the exclusive right to use and possess that Limited Common Area.

**2.7 Expansion.** Declarant reserves the right to subject Additional Land to this Declaration at any time, by the recordation of one or more supplemental declarations or similar instruments stating that certain real property is added to the Townhome Community and this Declaration. Declarant is not ever required to obtain the permission or consent of any Owner of any Parcel or any other third party, relating to expansion of the Townhome Community. Only Declarant and its assigns may exercise the option to expand the Townhome Community, and Declarant and its assigns shall have the right to expand the Townhome Community even if the Declarant no longer owns any of the Townhome Community. There are no limitations on the maximum or minimum amount of Additional Land which may be added. There may be more than one expansion and the expansion may be made as to any amount or in any order. Expansion shall occur by the Declarant recording in the official records of the Box Elder County Recorder a declaration, supplement, or other instrument indicating the Declarant's intent to expand the Townhome Community to include Additional Land identified in that instrument. Upon the recording of such instrument, the property described therein shall be subject in all respects to this Declaration and shall for all purposes be considered part of the Community. The Declarant shall have the sole discretion as to the development of any Common Area in any expansion area and may (or may not) include any facilities or amenities thereon that Declarant deems necessary. Such Common Areas, if any, shall be managed by the Association.

**2.8 Encroachments.** If any structure or Dwelling Unit improvement (including without limitation, roof or deck overhangs) constructed on any Lot, whether or not constructed in replacement of the structure or improvement previously located thereon (so long as such structure or improvement is in substantially the same configuration and location as such prior structure or improvement) now or hereafter encroaches upon any other Parcel or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure (including, without limitation, roof or deck overhangs) on any Parcel shall be partially or totally destroyed and then rebuilt in a manner intended to substantially duplicate the location and configuration of the structure so destroyed, minor encroachments of such structure upon any other Parcel or upon any portion of the Common Areas due to the reconstructed structure's being in a slightly different location than its predecessor, shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

**2.9 Party Walls/Roofs.** Each wall which is built as a part of the original construction of Dwelling Units within the Townhome Community and placed on the dividing line between two Dwelling Units shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Each Dwelling Unit may share one or more Party Wall, a common roof, a common exterior back wall, and a common exterior front wall, with an adjacent Dwelling Unit. The Owners acknowledge that certain repairs or maintenance to the roof or exterior walls of the Dwelling Units may become necessary, which repairs or maintenance cannot be performed on one Dwelling Unit only but may necessarily involve the other attached Dwelling Unit. Therefore, all repairs to the roof and to the surface of the exterior walls of all Dwelling Units and Party Walls will be made by the Association out of Association funds, as if those items are Common Areas (and for this specific purpose only, such items are hereby considered Common Area). If a Party Wall or common improvement is damaged or destroyed by the fault or negligence of one of the Owners, such damage shall be repaired by the Owner (unless the damage is covered by the Association's and Owner's insurance) to a condition equal to or better than immediately prior to the damage, and the negligent Owner or Owner at fault shall pay for any and all costs incurred to cure the damage. Should a Party Wall be damaged or destroyed by any cause other than by default or by an act of negligence of an Owner of the adjacent Unit, the damage shall be rebuilt or repaired to a condition equal to or better than immediately prior to the damage, at the joint expense of the Owners of the two affected Dwelling Units, provided that any amount received from insurance companies for such

damage shall first be applied to the restoration of the affected Dwelling Units. Should a common roof or any part of the exterior wall(s) be damaged or destroyed by any cause other than by fault or by an act of negligence of an Owner of the adjacent Dwelling Unit, the damage shall be rebuilt or repaired by the Association to a condition equal to or better than immediately prior to the damage, at the expense of the Association, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Dwelling Units.

### **ARTICLE III** **Design/Architectural Standards**

**3.1     Design Guidelines.** Each Dwelling Unit must be designed and constructed in accordance with the Design Guidelines imposed, adopted, revised, and amended by the Board. IN ADDITION TO OTHER REMEDIES, THIS DECLARATION AND/OR THE DESIGN GUIDELINES MAY PROVIDE FOR A FINE OF UP TO \$15,000.00 AGAINST ANY OWNER AND PARCEL SUBJECT TO THIS DECLARATION FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE DECLARANT OR FOR FAILURE TO COMPLY WITH ANY APPROVAL OF THE DECLARANT, OR MAY REQUIRE A SECURITY DEPOSIT TO ASSURE COMPLIANCE WITH APPLICABLE REQUIREMENTS.

**3.2     Submission of Plans Required.** No Regulated Modification may be commenced, constructed, erected, placed, maintained or made upon any Parcel unless and until complete plans and specifications have been submitted to and approved in writing to the Board. In addition to any other applicable requirements per applicable Design Guidelines, any plans and specifications to be submitted must specify, in such detail and form as the Board may reasonably require:

- (a)**     the location upon the Parcel where the Regulated Modification will occur or be placed;
- (b)**     exterior building elevations, including, the dimensions, nature, kind, shape, height, and color scheme of, and all materials to be used in connection with, the Regulated Modification;
- (c)**     appropriate information concerning grading, paving, decking and landscaping details;
- (d)**     other information, plans or specifications as may be requested or required by the Board that in the sole opinion of the Board is reasonably necessary to fairly and fully evaluate all aspects of the proposed Regulated Modification.

**3.3     Manner and Effect of Adoption of Design Guidelines.** The Design Guidelines are of equal dignity with, and shall be enforceable in the same manner as, other provisions of this Declaration, provided: (a) the Design Guidelines must not be deemed a waiver, modification, or repeal of any of the provisions of this Declaration; and (b) the Design Guidelines may not be enacted retroactively except that all repairs, modifications or maintenance performed subsequent to adoption shall be performed in such manner as to bring the Regulated Modification, so far as practicable, in compliance with all then applicable Design Guidelines.

**3.4     Disapproval.** The Board will include aesthetic judgment in its decision-making process, and approval of submitted plans will not be required simply because the plans satisfy stated objective requirements. The Board may disapprove any request for approval for any reasons, including the following: (i) failure to comply with the Design Guidelines; (ii) lack of sufficient information, plans or specifications

as reasonably determined by the Board to enable the Board to fairly and fully evaluate the proposed Regulated Modification or the uses thereof; or (iii) failure to include any information, plans or specifications as may be reasonably requested by the Board. In the event of disapproval, the Board will so notify the applicant in writing; and if disapproval is based on lack of sufficient information, plans or specifications, then the Board will also notify applicant of the additional information, plans or specifications required.

### **3.5 Approval and Conditional Approval.**

**3.5.1 Manner.** The Board may fully approve any request for approval or approve any such request subject to compliance with conditions stated in a conditional approval. Conditions for approval may include, without limitation, requirements for modifications to plans and specifications such as upgrading or other changes as to materials or changes as to color or design or location, or requirements for addition of other improvements such as sight barrier landscaping or other devices to screen a proposed Regulated Modification from view from adjacent Parcels. A conditional approval is effective only upon full compliance with the stated condition(s). The Board will notify the applicant in writing of such approval (together with any qualifications or conditions of approval).

**3.5.2 Effect.** Except for fraud, misrepresentation, accident or mistake, the Board's approval or conditional approval is final as to each Regulated Modification and may not be revoked or rescinded once given except as stated herein regarding conditional approvals. The Board's approval or conditional approval of an application does not constitute a waiver, modification or repeal of any covenant contained in this Declaration, or preclude by estoppel or otherwise full enforcement of all provisions hereof. The Board's approval or conditional approval of an application may not be deemed a waiver of the right of the Declarant to subsequently disapprove similar requests for approval, or any of the features or elements included therein.

**3.6 Submission and Response.** Applications for Board's review and approval are deemed submitted to the Board only upon actual receipt by the Board. All responses by the Board will be in writing, and are deemed given when deposited in the United States mail, postage prepaid and addressed to, the applicant at the address specified in the application or the last known address of the applicant according to the records of the Declarant, or delivered by email address if the recipient first consented to use of email for official notifications. The Board has no duty to respond to, and the provisions of this Section do not apply regarding, any application if the Person(s) identified in the application do not appear as Owners according to the books and records of the Board unless and until receipt of such confirmation of ownership as is satisfactory in the sole opinion of the Board. Where more than one Owner applies for approval, the delivery or mailing of a response to any one of the Owners constitutes notice to all such Owners. The Board may retain an architectural firm or other third-party contractor to review and approve submissions to the Board. As a condition to review any submittals, the Board may charge, and require an Owner to pay, a reasonable fee that will cover the costs of any third party to review and approve the submissions and to compensate the Board for the administrative and overhead expense associated with the review and approval of any submittals.

### **3.7 Implied Conditions of Approval.**

**3.7.1 Applicability.** Unless expressly waived or modified by the Board in writing, each and every approval or conditional approval of a Regulated Modification is subject to all provisions of this Article III whether or not stated in the approval or conditional approval.

**3.7.2 Commencement and Completion of Work.** Approval of an application for a Regulated Modification is effective for one (1) year from the date of approval. If work on a Regulated Modification is not commenced within one (1) year after approval or conditional approval, such approval will become

null and void and the Owner must submit a new application and obtain a new approval for the Regulated Modification, unless an extension is agreed to by the Board. Upon commencement, the Owner must diligently prosecute and complete all work as soon thereafter as reasonably possible.

**3.7.3 Compliance with Plans.** All work on a Regulated Modification must proceed in compliance with: (i) the application and plans and specifications approved by the Declarant, (ii) any and all conditions stated by the Board in the approval, and (iii) any and all applicable governmental laws, rules, regulations, ordinances, and building codes.

**3.7.4 Permit Requirements.** Each Owner is solely responsible for full compliance with all permitting requirements of all governmental agencies having jurisdiction, and shall apply for and diligently pursue obtaining of all required permits promptly after approval or conditional approval is received. Without limitation of the foregoing, the Board may deny approval pending, or conditional approval upon, prior compliance with applicable permitting requirements or upon receipt of certification satisfactory to the Board that no such permitting requirements exist.

**3.7.5 Compliance with Laws.** Each applicant is solely responsible for ensuring that (and nothing in the Declaration or any written decision of the Board shall be construed as a covenant, representation, guaranty or warranty that) any proposed Regulated Modification will be in compliance with applicable governmental laws, ordinances or regulations (including building codes or permit or licensing requirements).

**3.8 Inspection Rights.** Upon reasonable notice (oral or written), a representative of the Association may enter upon a Parcel without liability for trespass or otherwise for purposes of inspecting work in progress and/or as to completion of any Regulated Modification in compliance with the approved plans, specifications, information and documentation for same, and as to compliance with any applicable provisions of the Declaration and the Design Guidelines.

**3.9 Limitation of Liability.** Neither the Board, the Association, the Declaration, nor any of its/their manager, officers, employees, or representatives are liable to any Owner or to any other Person for any actions or failure to act or in connection with any approval, conditional approval or disapproval of any application for approval, including without limitation, mistakes in judgment, negligence, malfeasance, or nonfeasance. No approval or conditional approval of an application or related plans or specifications and no publication of Design Guidelines may ever be construed as representing or implying that, or as a covenant, representation, warranty or guaranty that, if followed, the Regulated Modification will comply with applicable legal requirements, or as to any matters relating to the health, safety, workmanship, quality or suitability for any purpose of the Regulated Modification.

**3.10 Limitation of Applicability.** None of the provisions of this Article III apply to any activities of Declarant.

**3.11 Waiver by Declarant.** Despite anything in this Declaration to the contrary, during the Period of Administrative Control, Declarant may elect to forego and waive the requirement for the Board to review and approve any Regulated Modifications. In that case, any Regulated Modifications are not required to be approved by the Board, but still must comply with the Design Guidelines; and any Owner will have the right to enforce observance and performance by another Owner to the Design Guidelines.

### **3.12 Enforcement.**

**3.12.1 General.** The Association, and the Declarant during the Period of Administrative Control, will have the right to enforce observance and performance of all restrictions, covenants, conditions

and easements set forth in this Declaration, and in order to prevent a breach thereof or to enforce the observance or performance thereof have the right, in addition to all legal remedies, and all other rights and remedies set forth in this Declaration, to an injunction either prohibitive or mandatory.

**3.12.2 No Estoppel, Waiver or Liability.** Failure of Declarant the Association to enforce any of the provisions of this Declaration will not be deemed a waiver of the right to do so thereafter (including without limitation as to the same or similar violation whether occurring prior or subsequent thereto). No liability may attach to Declarant or the Association for failure to enforce any provisions of this Declaration.

**3.12.3 Cumulative Rights and Remedies.** Each right and remedy set forth in this Declaration and the Association is separate, distinct and non-exclusive, and all are cumulative. The pursuit of any right or remedy so provided or as provided by law, or the failure to exercise a particular right or remedy, will not be construed as a waiver of such right or remedy or any other right or remedy. Without limitation of the foregoing, the provisions of this Section are declared specifically to be cumulative of the provisions of this Declaration.

**3.12.4 Liability for Conduct of Related Parties.** Each Owner must ensure that the Occupants on its Parcel and any guests and invitees strictly comply with all applicable provisions of this Declaration. Each Owner is liable for all consequences of any such violation by such Owner's Occupants and their guests and invitees.

**3.12.5 Obligation for Payment of Costs and Expenses Resulting from Violations.** Each Owner that violates any of the provisions of this Declaration is liable for payment to the Association for, and hereby indemnifies and holds harmless the Association from, any and all claims, liabilities, damages, loss, costs, expenses, suits and judgments of whatsoever kind, including reasonable attorney's fees whether incurred prior to, during or after proceedings in a court of competent jurisdiction, incurred or attributable to any such violation(s), and must pay over to the Association all sums of money which the Association may pay or become liable to pay as a consequence, directly or indirectly, of such violation(s). All such sums are secured by the continuing assessment lien established by this Declaration. All such sums are due and payable upon demand by the Association without the necessity of any other or further notice of any act, fact or information concerning the Association's rights or such Owner's liabilities under this Section; provided, in the case of indemnification the demand shall contain a statement setting forth the Association's payment or liability to pay the claim with sufficient detail to identify the basis for the payment or liability to pay.

**3.12.6 Filing of Notices of Non-Compliance.** At any time, the Association determines in good faith there probably exists any noncompliance with any provisions of this Declaration, the Association may at its option direct that a notice of noncompliance be filed in the Official Public Records of Box Elder County, Utah covering the affected Parcel at the sole cost and expense of such Owner(s).

## **ARTICLE IV**

### **Use Restrictions**

**4.1 Signs.** Except for a Community monument sign that may be installed and maintained by the Declarant in the Declarant's sole discretion, no signs, billboards, posters, banners, pennants or advertising devices of any kind, including without limitation business, professional, promotional or institutional signs, are permitted on any Parcel. Standard real estate for sale signs, state and US flags exempted. No sign is permitted which is vulgar, obscene or otherwise patently offensive to persons of ordinary sensibilities. No Owner or Occupant (or their tenants, guests or invitees) is permitted to place any sign on another Owner's Parcel.

**4.2 Parking.** All vehicles must be parked on the Owner's Parcel or in Common Areas specifically laid out and marked for parking, and nowhere else. Construction vehicles will be allowed to park temporarily on public roads during construction in compliance with applicable laws as long as road traffic is not impeded.

**4.3 Occupants Bound.** All provisions of this Declaration that govern the conduct of Owners and which provide for sanctions against Owners also apply to Occupants of any Parcel. Each Owner must comply, and must cause all of Owner's Occupants to comply, with this Declaration, and is responsible for all violations thereof and/or all damage or loss caused by such Occupants. Any failure in compliance will be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Declarant or, in a proper case, by any aggrieved Owner or Owners. In addition, the Declarant may avail itself of any and all remedies provided in this Declaration.

**4.4 Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, or kept on any portion of the Townhome Community, except dogs, cats, or other usual and common household pets, not to exceed the number as may be permitted on a Parcel or within a Dwelling Unit pursuant to the laws, codes, and ordinances of the Municipal Authority. No pets may be kept, bred, or maintained for any commercial purpose. No animals or pets shall be permitted to roam free anywhere in the Townhome Community.

**4.5 Quiet Enjoyment; Nuisances.** No portion of the Townhome Community may be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition (with the understanding that the Townhome Community and a Parcel may be maintained in its natural environment) or that will be obnoxious to the eye; nor will any substance, thing, or material be kept upon any portion of the Townhome Community that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might unreasonably disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Townhome Community. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Townhome Community except small personal fires in appropriate fire pit.

**4.6 Unsightly or Unkempt Conditions.** It is the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Parcel. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Townhome Community. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve (36) hours.

**4.7 Antenna and Satellite Dish Systems.** To the extent permitted by the Telecommunications Act of 1996, as amended from time to time (the "*Telecommunications Act*"), without the Declarant's approval: (a) no direct broadcast satellite dish or multipoint distribution service antenna larger than one (1) meter in diameter will be allowed on a Dwelling Unit, (b) no television broadcast antenna mast may extend above the height of the center ridge of the roof of the Dwelling Unit, and (c) no multipoint distribution service antenna mast may exceed the height of twelve feet (12') above the center ridge of the roof of the Dwelling Unit. This Section 4.7 shall be interpreted to be as restrictive as possible, while at all times complying with the provisions of the Telecommunications Act. Terms used in this Section 4.7, shall be deemed to have the meanings set forth in the Over-The-Air Reception Devices Rule ("*OTARD*") promulgated under the Telecommunications Act or other rules and regulations promulgated pursuant

thereto, and where OTARD, the Telecommunications Act, or any other rule or regulation promulgated thereunder requires the Declarant to act reasonably, or respond promptly, such obligation shall be deemed a part of the Declarant's obligations under this provision. In the event of an amendment to the Telecommunications Act which conflicts with this provision, the conflicting provision herein automatically shall be deemed deleted, and Declarant, without the joinder of any other Owner(s), may amend this provision so as to comply with the amended Telecommunications Act.

**4.8 Garbage Cans, Tanks, Etc.** All garbage cans, mechanical equipment, woodpiles, yard equipment and other similar items on Parcels shall be located or screened so as to be concealed from public view. Any propane tanks shall be located underground on the Owner's Parcel in compliance with all requirements of the Municipal Authority and in compliance with all applicable laws. No garbage or trash shall be placed or kept on any Parcel, except in covered containers of a type, size and style which are approved by the Declaration or required by the applicable Municipal Authority. All rubbish, trash and garbage shall be removed from the Parcels and shall not be allowed to accumulate thereon. Excluding trash collection days (and a reasonable period of time prior to and after such collection day), trash containers shall not be stored in areas that would allow such containers to be in a visible location. Any trash containers located outside of a Dwelling Unit shall be in bear, rat, and vermin proof containers. No outdoor incinerators shall be kept or maintained on any Parcel.

**4.9 Subdivision of Parcel.** Unless any of the following have been first approved in writing (i) by Declarant during the Period of Administrative Control, in the sole and absolute discretion of Declarant, or (ii) after the Turnover Meeting, by the Board in the sole and absolute discretion of the Board:

- a) No Parcel may be further subdivided or separated into smaller lots or parcels or joined with another parcel or Lot, or its boundary lines changed;
- b) No portion less than all of any Parcel or any easement or other interest therein, shall be conveyed or transferred by any Owner;
- c) No supplemental declaration or further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any Lot; and
- d) No application for rezoning or re-platting of any Parcel, and no applications for variances or use permits, shall be filed or pursued with a governmental agency or recorded in the county records.

Any of the foregoing actions taken without having been first approved in writing by (i) Declarant, during the Period of Administrative Control, in the sole and absolute discretion of Declarant, or (ii) after the Turnover Meeting, by the Board in the sole and absolute discretion of the Board, is null and void.

**4.10 Tents, Mobile Homes and Temporary Structures.** Except as may be permitted by Declarant during initial construction within the Townhome Community and except as set forth in this Declaration, no tent, shack, mobile home, or other structure of a temporary nature shall be placed upon a Parcel or any part of the Townhome Community. The foregoing prohibition shall not apply to restrict the construction or installation of a single utility or similar outbuilding to be permanently located on a Parcel, provided it receives the prior approval of the Declarant, as appropriate, in accordance with this Declaration. In addition, party tents or similar temporary structures may be erected for a limited period of time for special events.

**4.11 Drainage and Septic Systems.** Catch basins, drainage swales, and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person

other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. No Owner may interfere with the established drainage pattern over any part of the Townhome Community unless adequate provision is made for property drainage and is approved in advance by the Declarant. Established drainage shall mean and refer to the drainage which exists at the time the overall grading and development of the Townhome Community is completed by Declarant. Septic tanks and drain fields are prohibited within the Townhome Community. No Owner shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances, in any storm drain, drainage ditch, or stream within the Townhome Community.

**4.12 Utility Service.** No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, and cable information highways, shall be erected, placed or maintained anywhere in or upon any Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or buildings or other structures as approved by the Declarant, except for:

- (a) Overhead power poles and lines within the Townhome Community as approved by Declarant; and
- (b) boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices;
- (c) antennae and dish satellite systems pursuant to Section 4.7.

**4.13 Trailers and Campers.** No mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Parcel in front of the primary Dwelling Unit ("front" meaning the side facing the primary road access), except for on a temporary basis.

**4.14 Leasing of Dwelling Units/Restriction on Rentals.** The leasing of Dwelling Units shall be subject to any applicable laws, including, but not limited to, the U.S. Fair Housing Act, the Act, and the ordinances of the Municipal Authority. The Board may adopt reasonable rules regulating leasing and subleasing of all Dwelling Units, including rental restrictions on the term and number of leasing Dwelling Units permitted in the Community. The Board may adopt Rules to regulate the leasing of all Dwelling Units within the Project which may include, but are not limited to: requiring a copy of each lease to be provided to the Board, reporting of name and contact information for all adult tenants, reporting of vehicle information of the tenants, and any other information deemed necessary by the Board. Unless otherwise modified by further rule adopted by the Board, which the Board may do at any time and from time to time in the Board's sole discretion without amending this Declaration, the following leasing restrictions shall apply: no Owner shall be permitted to lease his/her Dwelling Unit for transient, hotel, short-term or seasonal purposes; all leases shall be for an initial term of no less than six (6) months; daily or weekly rentals are prohibited; all leases shall provide that the tenant is subject to and shall abide by the Governing Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Within 10 days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents by a tenant, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. If the Owner fails to act accordingly, the Board may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so. Notwithstanding the above, an Owner and any Dwelling Unit shall be exempt from any restrictions on leasing as follows: (a) if the Owner is in the military, the Owner may lease its Dwelling Unit for the period of the Owner's deployment, (b) any lease to the Owner's parent, child, or sibling, (c) if the Owner has been relocated by its employer for a period of no less than two (2) years, or

(d) if the Owner is a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for (i) the estate of a current Owner or Occupant of the Dwelling Unit, or (ii) the parent, child, or sibling of the current Owner or Occupant.

**4.15 Laws and Ordinances.** This Declaration shall be governed by the laws of the state of Utah, without regard to conflict of law principles. Every Owner and Occupant shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Parcel, Dwelling Unit and the Townhome Community, including any and all applicable zoning and land use laws and ordinances, and any violation thereof may be considered a violation of this Declaration; provided, the Declarant shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

**4.16 Unrelated Persons.** Dwelling Units shall be used by single families only, solely for residential purposes. No more than four unrelated persons may reside or live in a Dwelling Unit. Only persons who are all related by blood, marriage, adoption, or court-sanctioned guardianship are “related” persons.

**4.17 Solar Systems.** Solar energy systems and attendant equipment shall be prohibited from being constructed or installed in the Townhome Community. Notwithstanding the forgoing, if the Board elects to allow solar energy systems in the Townhome Community, the Board may adopt Rules and regulations for the installation of solar panels or other energy conservation equipment in the Design Guidelines. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Parcel, Dwelling Unit, or Townhome buildings. Solar panels or other equipment shall not be installed so as to be visible from the streets in the Townhome Community without prior approval from the Board as a variance. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system. If an approved solar energy system (installation, operation, maintenance, or otherwise) causes costs to the Association, then the Board may allocate these costs to the Owner who requested or benefit from the installation as the Board in its sole discretion determines. The costs arising under this Section shall be assessed and collected as an Individual Assessment. The Board shall have the sole discretion to determine compliance with the Design Guidelines and this Section.

**4.18 Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by unanimous vote): (i) either that the restriction would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce; and (ii) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Association or other Owners of the Townhome Community and is consistent with the high quality of life intended for residents of the Townhome Community. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act.

## ARTICLE V Declarant's Rights

**5.1 Transfer of Rights.** Any or all of the special rights and obligations of Declarant set forth in this Declaration may be transferred to other Persons, provided that the transfer shall neither reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the public records of Box Elder County, Utah.

**5.2 Administrative Control of Association.** Declarant shall assume full administrative

control of the Association through an appointed interim Board of Directors, which shall serve until the Turnover Meeting. The Turnover Meeting shall be held no later than upon expiration of the Period of Administrative Control. As allowed by Utah Code Ann. § 57-8a-502(1) (2021), the provisions of section 57-8a-502(1)(a)-(c) are hereby replaced and supplanted by the Period of Administrative Control set forth in this Declaration. The Period of Administrative Control shall expire upon the earlier of: (1) Three years after Declarant has ceased to own any Parcel, or (2) Declarant voluntarily terminating the Period of Administrative Control by written notice to the Owners and by calling and holding the Turnover Meeting.

**5.3     Other Rights.** In addition to any other rights under this Declaration or the Bylaws, as long as Declarant owns at least one Parcel within the Townhome Community, Declarant:

- (a)     Sales Office and Model.** Shall have the right to (i) maintain a sales office and model on one or more of the Parcels which Declarant owns, and (ii) authorize a designated builder to maintain a sales office or model on one or more of the Parcels which Declarant or the designated builder owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.
- (b)     For Sale Signs.** May maintain a reasonable number of For Sale signs, the size of which may be determined by Declarant, at reasonable locations on the Townhome Community.
- (c)     Approval of Amendments.** Consistent with the amendment provisions of this Declaration and Bylaws, the approval of the Declarant shall be required in order to adopt any amendment to the Declaration or Bylaws of the Association.
- (d)     The Act.** The Declarant, the Declarant-appointed Board and the Association are exempted from all procedures, requirements and obligations imposed by the Act to the extent allowed by the Act during the Period of Administrative Control and all rights authorized to be reserved by a declarant under the Act are hereby deemed reserved by the Declarant. The Declarant and the Declarant-appointed Board are exempt from association rules and the rulemaking procedure under the Act and all rights under that section are hereby reserved by Declarant.

**5.4     Rights/Easements Reserved to Declarant/Association.** Declarant reserves in favor of itself and its successors and assigns, and the Association, non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as drainage, utility or sewer easements or open space or Common Area or otherwise designated as an easement area over any road or on the Townhome Community, and over those strips of land running along the front, rear, side and other Parcel lines of each Parcel shown on the Plat. Declarant further reserves in favor of itself and its successors and assigns, and the Association, an easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Townhome Community and the Parcels therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Unit, or in the area or on the area in which the same is located. Declarant further reserves in favor of itself and its successors and assigns, and the Association, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Common Area and grade a portion of such Common Area adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Common Area, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope. Nothing in this section shall be interpreted to impose upon Declarant a duty to maintain, repair,

operate or service any easement, right of way or road or any improvements, fixtures or utilities located thereon.

## **ARTICLE VI** **Maintenance and Common Areas**

**6.1     Association Maintenance.** The Association shall provide for, as a Common Expense, such care, maintenance, repair and replacement of the following as deemed necessary or desirable by the Board to keep them attractive and generally in good condition: (1) Common Areas, (2) private utility lines serving more than one Dwelling Unit, (3) landscape and drainage easements, (4) Landscaping of the park strips in BR Mountain Road and 2650 West, (5) personal property owned by the Association, and (6) exterior surfaces of the Dwelling Units, including the roof, gutters and down spouts.

**6.2     Snow Removal.** The Association shall provide for snow removal from the Common Areas including shoveling the sidewalks on BR Mountain Road and 2650 West, So as to provide access to snowplows for snow removal, no Owner shall park or allow any person to park or remain parked any vehicle upon streets in front of the Owner's Parcel during snowstorms, snow removal, or periods when it would reasonably be anticipated that snow removal would take place. If a parked vehicle prevents or interferes with snow removal from any portion of the Property, the Owner shall be responsible for such snow removal and may be specially assessed any additional costs incurred by the Association as the result of such interference.

**6.3     Other Maintenance.** To the extent not clarified herein and not inconsistent with the provisions of this Declaration, the Association may, by duly adopted Board resolution, identify and assign those areas of maintenance and responsibility that are either (1) Owner responsibilities; or (2) Association responsibilities. Such determinations shall be set forth in a Board resolution distributed to all Owners and shall be binding against all Owners.

**6.4     No Association Liability.** Except to the extent any injury or damage is covered by the Association's insurance, the Association shall not be liable for injury or damage to any person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of any building, including from any pipes, drains, conduits, appliances, or equipment, or from any other place, unless caused by the grossly negligent or intentional act of the Association.

**6.5     Damage By Owner.** If any area or improvement is damaged, or the need for maintenance, repair or replacement is caused, by the willful or negligent acts of an Owner, their guests, tenants, invitees or other Parcel occupants, the Owner shall be responsible for the cost of required maintenance, repair or replacement and such costs shall automatically and immediately be an Assessment against such Owner.

**6.6     Assumption of Owner Maintenance.** The Association may, but is not required to, assume an Owner's maintenance responsibility as to Parcel if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Board shall provide notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action with ten (10) days after mailing of such written notice, then the Association may proceed to maintain the Parcel. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall automatically and immediately be an Assessment against such Owner.

**6.7     Owner Maintenance.** Except to the extent that the Association is responsible therefore

under this Declaration, maintenance of each Dwelling Units shall be the responsibility of the Owner(s) thereof, who shall maintain such Dwelling Units in good condition and repair. Each Owner at his or her sole expense shall maintain the interior of the Dwelling Unit, including floors, windows, and window frames, and shall also maintain the exterior doors/door frames, as well as attic space, foundations, floor joists, and garage doors. In addition to decorating and keeping the interior of the Owner's Dwelling Unit in good repair and in a clean and sanitary condition, the Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, heating equipment, air conditioners, lighting fixtures, refrigerators, dishwater, disposal equipment, ranges, toilets, or other appliances or fixtures that may be in, or connected with, his or her Unit. Any fixture, pipe, conduit, or other utility device or apparatus that services only one Dwelling Unit shall be the responsibility of that Dwelling Unit's Owner to maintain, repair, and replace. Each Dwelling Unit shall be maintained so as to not detract from the appearance of the Townhome Community and so as to not adversely affect the value or use of any other Dwelling Unit.

**6.8 Trash/Utilities.** The Association may arrange and pay for a dumpster and garbage removal. Each Owner shall pay for all other utility services which are separately billed or metered to individual Dwelling Units by the utility or other party furnishing such service.

## **ARTICLE VII** **Assessments**

**7.1 Covenant for Assessments.** Each Owner, by acceptance of a deed hereafter conveying any Parcel to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments, as provided for and defined below: Annual Assessments, Special Assessments, Individual Assessments, and Emergency Assessments.

**7.2 Installments of Annual Assessments.** The Board shall determine whether installments of Annual Assessments are levied and collected on a monthly, quarterly, semi-annual, annual or another basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty. No member may exempt itself from liability for Assessments by abandonment of any Parcel.

**7.3 Equality.** Except as otherwise provided herein, Owners must pay equal Annual Assessments, Special Assessments, and Emergency Assessments, all commencing upon the date the Parcels are made subject to this Declaration. Individual Assessments shall be apportioned exclusively against the Parcel(s) benefitted or to which the expenses are attributable as provided for below.

**7.4 Declarant Assessment Exemption.** Notwithstanding anything herein to the contrary, the Declarant, and any Parcel to which the Declarant holds record title, shall be exempt from any Assessment under this Article.

### **7.5 Budget and Annual Assessment.**

**7.5.1 Budget.** The Board must prepare an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect. The Board must present the adopted budget to Association members at a meeting of the members.

### **7.5.2 Determination of Annual Assessment.**

- (a) The Board must fix the initial amount of Annual Assessments at least thirty (30) days in advance of the beginning of an Annual Assessment period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning of any assessment period, or thirty (30) days in advance of any increase in the Annual Assessment that is to take effect during any assessment period.
- (b) The omission by the Board, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.
- (c) If the Annual Assessments levied at any time are, or will become, inadequate to meet the expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board may determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and establishes the equitable change in the amount of the Annual Assessment. Owners shall be given at least twenty (20) days' written notice of any changes in the amount of an Assessment.

**7.6     Special Assessments.** In addition to the Annual Assessments authorized in this article, the Association may levy a special assessment from time to time ("Special Assessment") against all Parcels and/or the Owner(s) of all Parcels for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association which cannot be paid for through other types of Assessments. The Board may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment levied within 12 months of a prior Special Assessment, and any Special Assessment greater than \$500 per Parcel may only be levied if it is first voted upon by the Owners against which the Special Assessment is to be levied, and: (1) the votes cast favoring the action exceed the votes cast opposing the action, and (2) a quorum of Owners representing at least 30% of the voting rights of Owners against which the Special Assessment is to be levied cast a vote.

**7.7     Individual Assessments.** Any expenses which are not Common Expenses and which benefit or are attributable to fewer than all of the Parcels, such as (by way of example and not limitation) roads, driveways, building structures or other improvements serving some but not all Parcels, may be assessed exclusively against the Parcels actually affected or benefitted ("Individual Assessments"). Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Parcel to reimburse the Association for costs incurred in bringing the Parcel or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents, and for Fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing Documents; (2) Expenses relating to the cost of maintenance, repair and replacement of a Parcel to the extent incurred by the Association, other than Common Expenses incurred in fulfilling its ordinary maintenance responsibilities to Parcels under this Declaration.

**7.8     Emergency Assessments.** Notwithstanding anything contained in this Declaration, the Board, without Owner approval, may levy emergency assessments in response to an emergency situation. Prior to the imposition or collection of any assessment due to an emergency situation, the Board shall pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and

the resolution shall be distributed to the Owners with the notice of the emergency assessment. If such expenditure was created by an unbudgeted utility, maintenance or similar expense or increase, the assessment created thereby shall be discontinued by the Board by a similar resolution if such expense is subsequently reduced, or to the extent the next succeeding annual budget incorporates said increase into the annual assessment. An emergency situation is one in which the Board finds: (a) an expenditure, in its discretion, required by an order of a court, to defend the Association in litigation, or to settle litigation; (b) an expenditure necessary to repair or maintain the Townhome Community or any part of it for which the Association is responsible where a threat to personal safety in the Townhome Community is discovered; (c) an expenditure necessary to repair, maintain, or cover actual Association expenses for the Townhome Community or any part of it that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases in utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.); or (d) such other situations in which the Board finds that immediate action is necessary and in the best interests of the Association and/or the Townhome Community.

**7.9 Reserve Funds.** The Association shall establish and maintain a reserve fund in accordance with applicable law.

**7.10 Fee Due on Transfer (Reinvestment Fee).** Each time legal title to a Parcel passes from one person to another, on the effective date of such title transaction, the new Owner shall pay to the Association, in addition to any other required amounts, a reinvestment fee, in the initial amount of 0.5% of the value of the Parcel being sold, or such other amount determined by the Board from time to time. The following are not subject to the fee: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity, or to a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) for estate planning purposes; (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (v) the transfer of a Parcel owned by a financial institution, except to the extent required for the payment of the Association's costs directly related to the transfer of the property, not to exceed the maximum amount permitted by applicable law.

**7.11 Nonpayment of Assessments.** The Annual Assessments shall be due and payable on a date established by the Board from time to time, and shall be delinquent if not paid by on the due date; initially, Annual Assessments will be paid monthly on the first day of each month. The due date of any Special Assessment or other Assessment shall be fixed in the resolution or document authorizing or levying the Assessment

**7.11.1 Interest.** Delinquent payments shall bear interest from the first date after the due date, or such other date established by the Board from time to time (the "date of delinquency"), initially at the rate of 18% per annum, or such other rate established by the Board from time to time.

**7.11.2 Late Charge.** Each delinquent payment shall initially be subject to a late charge of Thirty Dollars (\$30.00), or such other amount as determined by the Board from time to time.

**7.11.3 Acceleration.** If the delinquent installments of any Assessment, including an Annual Assessment, and any charges thereon are not paid in full, the Board, or its authorized agent, may declare all of the unpaid balance of the Assessment to be immediately due and payable upon not less than ten (10) days' written notice to the Owner, and may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law, including the Act, and this Declaration. If, however, the Assessment is accelerated and an Owner subsequently files

bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

**7.11.4 Rent Payments by Tenant to Association.** If the Owner of a Parcel who is leasing the Parcel fails to pay an assessment for more than 60 days after the assessment is due, the Board may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic payment, and the Association shall apply such rent payments to the outstanding assessment balance until all amounts due from the Owner to the Association are paid. Such demand to the tenant shall be made in accordance with the law and the written procedures of the Association. The Board, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and the written procedures of the Association. Each Owner shall provide written notice to its tenant(s) of the tenant(s)' potential obligations under this section at the commencement of any lease.

**7.11.5 Remedies.** All membership rights, including the right of a Member to vote shall be automatically suspended during any period of delinquency, unless otherwise determined by the Board. A Board member shall become immediately ineligible to serve on the Board and automatically dismissed from such position if delinquent more than 60 days in the payment of any Assessment. The Association shall have each and every remedy for collection of assessments provided in the Act as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy and to bring this Declaration into compliance with the Act.

**7.12 Lien.** All Assessments imposed shall be a charge and continuing lien upon each of the Parcels against which the assessment is made in accordance with the terms and provisions of this Article and shall be construed as a real covenant running with the land. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment. In a voluntary conveyance, the grantee of a Parcel shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

**7.13 Enforcement of Lien.** The Association may enforce the lien for any Assessment, including Annual, Special, Individual, Emergency, or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Parcel against which the Assessment is made. The lien is established and may be enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for breach of any provisions of the Governing Documents. The lien maybe foreclosed judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. The Association, through duly authorized agents, shall have the power to bid on the Parcel at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Parcel, and the defaulting Owner shall be required to pay the reasonable rental value of such Parcel during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security. Such rent shall not be applied to, and shall be in addition to, any outstanding amounts owed to the Association for Assessments or enforcement/foreclosure costs.

**7.14 Appointment of Trustee.** The Declarant, the Association and each Owner hereby

appoints the attorney of the Association who has been retained by the Association at the time a foreclosure is initiated as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code, as may be amended from time to time, and/or as provided further by the Act or any other applicable law. The declarant hereby conveys and warrants pursuant to Utah Code Ann. Sections 57-1-20 and 57-8a-302 (2020) to Kyle Fielding, Esq., of McDonald Fielding, PLLC, 321 N. Mall Dr., Suite K-101, St. George UT 84790 (who is hereby appointed trustee, subject to substitution from time to time as provided by law), with power of sale, the Parcels and all improvements and appurtenances to the Parcels for the purpose of securing payment of assessments under the terms of the declaration.

**7.15 Subordination of Lien to Mortgages.** The lien of the Assessments provided for in this article shall be subordinate to the lien of any *bona fide* first mortgagees or deeds of trust now or hereafter placed upon the Parcel subject to assessment, except as follows: the sale or transfer of any Parcel pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Parcel from liability for any Assessments thereafter becoming due, or from the lien of any future assessment, nor shall it relieve any personal obligation of the Owner.

**7.16 Personal Obligation and Costs of Collection.** Assessments imposed under this Declaration, together with interest at a rate to be established by resolution of the Board, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of the Owner holding title to any Parcel at the time when the assessment became due.

**7.17 Duty to Pay Independent.** No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under the Act, this Declaration, or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of the each Owner.

**7.18 Statement of Unpaid Assessment & Payoff Information.** The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether Assessments has been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge, as determined by the Board, may be levied in advance by the Association for each certificate so delivered. The Association may charge a fee for providing Association payoff information needed in connection with the financing, refinancing, or closing of a Owner's sale of the Owner's Parcel up to the maximum amount allowed by law, as determined by the Board.

## Article VIII

### The Association

**8.1 Association.** The Association has been, or will be, organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Title 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively dissolved by the State of Utah or for any other reason whatsoever ceases to exist as such, the Board may re-incorporate the Association without a vote of the Owners, or the Association may register with the State of Utah or otherwise continue operating as an unincorporated association. The affairs of the Association shall be

governed by a Board as provided herein and in the Bylaws. Declarant has appointed an interim Board of Directors of the Association, which shall serve until their successors have been elected at the Turnover Meeting.

**8.2     Membership.** Each Owner shall be a member of the Association. The membership shall commence, exist and continue simply by virtue of ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**8.3     Voting Rights.** The method of voting shall be as provided in the Bylaws. Voting rights within the Association shall be allocated as follows:

**a)     Parcels.** Subject to any rights granted to Declarant during the Period Administrative Control, each Parcel shall have one (1) vote in matters of the Association for each Parcel owned. If a Parcel is owned by more than one person, those Owners collectively get one vote.

**(b)     Declarant.** Notwithstanding the foregoing, for each Parcel owned, the Declarant shall have five votes per Parcel during the Period of Administrative Control until, but not including, the Turnover Meeting.

**8.4     Powers, Duties and Obligations.** The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a corporation and under any applicable statute, as such statute may be amended to expand the scope of association powers, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments and Fines as provided in this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

**(a)     Delegation.** The Board may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration.

**(b)     Borrowing.** The Association may borrow money, provided the assent of a majority of all Owners is obtained prior to mortgaging, pledging or hypothecating any or all of the Association's real property as security.

**(c)     Telecommunications/Fiber Optic/Related Contracts.** Provided the Association already provides such service to the Parcels, the Board shall have the power, in its own discretion and subject to federal law, to enter into, accept an assignment of, or otherwise cause the Association to comply with contracts with Telecommunication Service providers and Telecommunication Facilities owners (both, a "Telecommunication Provider"), pursuant to which the Telecommunication Provider serves as the exclusive provider of Telecommunication Services and/or Telecommunication Facilities to each Parcel in the Properties, as well as the power to enter into or contract on behalf of the Association for similar bulk rate service contracts of any nature deemed in the Association's best interests. If such service(s) is not already provided to the Parcels, the prior approval of the Owners shall be obtained by a vote where a majority of the votes cast are cast in favor of the service.

**(d)     Bylaws.** The initial Bylaws of the Association are attached hereto as **Exhibit C.**

**(e)     Rules and Regulations.** In addition to the restrictions and requirements above, the Board from time to time may, by resolution, adopt, modify, or revoke such rules and

regulations governing the conduct of persons in the Townhome Community and the operation and use of the Parcels, Common Areas and the Townhome Community as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Townhome Community. Reasonable fines may be levied and collected as an assessment for violations of said rules and regulations and for violations of any restrictions contained in this Declaration. A schedule of Fines may be adopted by the Board of Directors specifying the amounts of such Fines, and any other provisions or procedures related to the levying of such Fines.

## Article IX

### Design Guidelines and Review

**9.1      Purpose.** These covenants are designed to establish a quality harmonious development and to maintain that harmonious quality as long as possible. The intent of these covenants is that there shall be certain minimum architectural and design standards applicable within the Townhome Community, subject at all times to possible exceptions, adjustments, or variances as the Board may agree to from time to time and/or on a case-by-case basis.

**9.2      Improvement Approval.** No exterior addition to, or change or alteration thereto, of any sort, whether structural, landscaping, cosmetic or otherwise, be made by an Owner until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board. Such approval shall be solely at the discretion of the Board as it deems appropriate from time to time. Any such request shall be deemed to have been denied if the relevant Owner, including any subsequent Owner, cannot produce the written approval granted by the Board upon request, and any changes or alterations made by an Owner, or prior Owner, shall be removed and the property restored to its original condition at the request of the Board. In the event the Board fails to approve or disapprove a request by an Owner, the request will be deemed to have been denied. This subsection shall not apply to Declarant's building or construction activities during the building and development of the Townhome Community.

**9.3      Design Guidelines.** Design and construction of Improvements (other than by the Declarant) shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration the Design Guidelines. The term "Design Guidelines" shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Townhome Community be equal or superior to that utilized for original construction. All original construction by Declarant or any affiliate person or entity of the Declarant is hereby approved. All builders and owners, including individual builders of one or more Parcels obtained from the Declarant, shall comply with and are bound by the design restrictions herein and the Design Guidelines, if and when such are adopted or may exist from time to time. The Board is empowered to adopt, amend, replace, or otherwise implement or terminate Design Guidelines at any time in the Board's sole discretion.

## Article X

### Insurance

**10.1      Types of Insurance Maintained by the Association.** The Association shall obtain the following minimum types of insurance:

**(a)      Liability.** A public general liability insurance policy covering the Association, its

officers, Board members and managing agents, having at least a Two Million Dollars (\$2,000,000.00) limit per total claims that arise from the same occurrence or in an amount not less than the minimum amount required by applicable law, ordinance or regulation. Coverage under this policy shall include, without limitation, all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas. The named insured under any policy of insurance shall be the Association, and each Owner shall also be an insured.

**(b) Property.** The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including the Dwelling Units, fixtures, and building services equipment. The Association may maintain broader coverage if afforded by the insurance contract. The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Parcel or otherwise permanently part of or affixed to Common Areas, or Parcels, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows. At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by “special form” property coverage. The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Parcels) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry. The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property’s insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance. If a loss occurs that is covered by the property insurance policy in the name of the Association and another property insurance policy in the name of an Owner, then the Association’s policy provides primary insurance coverage, and: (i) the Owner is responsible for the Association’s policy deductible; and (ii) the Owner’s policy, if any, applies to that portion of the loss attributable to the Association’s policy deductible. If an Owner suffers damage to any combination of a Parcel (“Unit Damage”) as part of a loss, resulting from a single event or occurrence, that is covered by the Association’s property insurance policy (“a Covered Loss”). The Owner is responsible for a deductible amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage for that Parcel to the amount of the deductible under the Association’s property insurance policy; and if an Owner does not pay the amount required above within 30 days after substantial completion of the repairs to, as applicable, the Parcel, the Association may levy an assessment against the Owner for that amount. If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association’s policy deductible: (i) the Owner’s policy is considered the policy for primary coverage to the amount of the Association’s policy deductible; (ii) an Owner who does not have a policy to cover the Association’s property insurance policy deductible is responsible for the loss to the amount of the Association’s policy deductible; and (iii) the Association need not tender the claim to the Association’s insurer. The named insured under any policy of insurance shall be the Association, and each Owner shall also be an

insured under all property and insurance policies.

**(d) Fidelity Insurance or Bond.** The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board, employees, and all others who are responsible for handling funds of the Association, including any property manager or Managing Agent. Such fidelity coverage shall: (i) name the Association as an obligee; (ii) not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or Managing Agent, as the case may be, at any given time, and shall in no event be in an amount less than three months assessments on all Parcels plus reserves; (iii) contain an appropriate endorsement(s) to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers, and to cover the Association's Managing Agent, if the Association has delegated some or all of the responsibility for the handling of funds to a Managing Agent; (iv) provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten (10) days prior written notice to the Association or any insurance trustee.

**(e) Miscellaneous Items.** The following provisions shall apply to all insurance coverage of the Association:

- 1) Certificate of Insurance.** Evidence of insurance shall be issued to each Owner and Mortgagee upon request.
- 2) Deductible.** The Association shall pay for the deductible on any claim made against the Association's property insurance policy for a covered loss incurred to the Common Area, except where the claim is made because of the negligence or willful acts of an Owner or occupant, including a guest, invitee, or visitor, as determined by the Board. In such cases, the corresponding Owner shall pay the deductible amount.
- 3) Special Endorsements.** Each policy shall contain or provide those endorsements commonly purchased by the other community association in the county.
- 4) Intent.** The foregoing provisions shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or Association may deem necessary or appropriate from time to time, including directors and officers' liability insurance.

**10.2 Owner Insurance Responsibility.** The Association's policy does not and will not cover the contents of a Parcel or an Owner's personal property.

### **10.3 Power of Attorney**

**(a)** Notwithstanding any of the foregoing provisions and requirements relating to Association property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement (the "Insurance Trustee") who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to

accomplish this purpose. By purchasing a Parcel, all Owners appoint the Association or any Insurance Trustee designated by the Association as attorney-in-fact for the purpose of purchasing and maintaining the insurance specified in this section, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose.

**(b)** By purchasing a Parcel, all Owners appoint the Association or any trustee designated by the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings or negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority

## **ARTICLE XI** **General Provisions**

**11.1 Run with the Land.** The covenants and restrictions of this Declaration shall run with and bind the Townhome Community and each Parcel, and shall inure to the benefit of and shall be enforceable by the Declarant, each Owner, and their respective legal representatives, heirs, successors, and assigns.

**11.2 Amendment.**

**11.2.1 Amendments.** This Declaration may be amended by an affirmative vote by the Owners collectively owning at least sixty percent (60%) of the Parcels within the Townhome Community, but only after the Period of Administrative Control. If the necessary votes and consents are obtained, the Owners shall cause to be recorded in the official records of Box Elder County, Utah, an Amendment to this Declaration containing either (i) the signatures of Owners collectively owning at least sixty percent (60%) of the Parcels within the Townhome Community, or (ii) the signature of the President along with a certification by the President that the requisite 60% voting threshold has been met in compliance with all applicable procedural requirements. The Owners have no right to amend this Declaration during the Period of Administrative Control.

**11.2.2 Unilateral Amendments.** Notwithstanding anything in this Declaration to the contrary, the Declarant alone has the exclusive right to amend or terminate this Declaration, for any reason and at any time, in the Declarant's sole discretion, during the Period of Administrative Control.

**11.2.3 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions.** Anything in this Section or the Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by the Utah Division of Real Estate (or similar agency), FHA, Veterans Administration, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of property within the Townhome Community, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Parcel(s). Any such amendment shall be effected by the recordation by Declarant of a Certificate of Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when recorded, shall be binding upon all of the Townhome Community and all persons having an interest therein. If any amendment requested pursuant to the provisions of this Section deletes,

diminishes or alters the control of the Declarant, Declarant alone shall have the right to amend this Declaration to restore such control.

**11.3 Severability.** In the event that any provision of this Declaration is declared void, invalid or unenforceable by a regulatory agency, tribunal or court of competent jurisdiction, the remainder of this Declaration shall continue in full force and effect as if the offending provision were not contained herein, and the offending provision shall be replaced by a valid provision which comes closest to the intention of the Declaration underlying the offending provision. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**11.4 Liability Arising From Conduct of Owners.** Each Owner and Occupant hereby indemnifies, holds harmless, and agrees to defend (with counsel reasonably acceptable to the indemnified party) the Declarant from and against all claims, damages, suits, judgments, court costs, attorney's fees, attachments and all other legal actions caused through the willful or negligent act or omission of an Owner or Occupant.

**11.4.1 Subsequent Statutory Authority.** If any applicable law, whether state or federal, is construed or amended to further eliminate or limit liability or authorizing further indemnification than as permitted or required by this Section 5.4, then liability will be limited or expanded to the fullest extent permitted by such applicable law.

**11.4.2 No Impairment.** Any repeal, amendment or modification of this Section may not adversely affect any rights or protection existing at the time of the amendment.

**11.5 Notices.** Any notice provided under this Declaration shall be provided in writing and sent or transmitted by one of the following means: (a) personally served, (b) sent by overnight courier by a national delivery service that maintains tracking information, or (c) sent by United States certified mail, return receipt requested, with postage prepaid, or (d) sent by email if the recipient has consented to use of email for such purpose; addressed to the Owner at the post office address of the Dwelling Unit located on the Parcel owned by such Owner within the Townhome Community or to Declarant at the address for the Declarant set forth in the first page of this Declaration. Declarant and each Owner may by notice at any time and from time to time designate a different address to which notices shall be sent. Such notices, demands or declarations shall be deemed sufficiently served or delivered for all purposes hereunder when delivered or when delivery is denied if attempted to be delivered at the appropriate address.

**11.6 Captions.** All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

**11.7 Declarant's Disclaimer of Representations.** Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a plat or other instrument Recorded in the office of the County Recorder of Box Elder County, Utah, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Townhome Community can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect.

**11.8 Interpretation of Covenants.** Except for judicial construction, the Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any

adjudication to the contrary by a court of competent jurisdiction, the Declarant's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by the covenants and provisions hereof.

**11.9 Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Townhome Community that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Parcel, the Common Areas, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

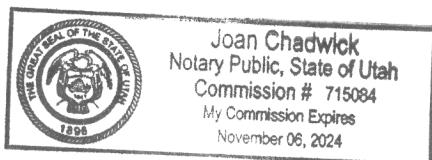
IN WITNESS WHEREOF, Declarant has executed this Declaration this 2 day of NOV <sup>23</sup>, 2022.

Sierra Homebuilders, LLC,  
a Utah limited liability company

By: Jay Stocking  
Name: Jay Stocking  
Title: Manager

STATE OF Utah )  
County of Box Elder ) ss.  
                          )

On the 2 day of NOV, 2023, personally appeared before me Jay Stocking, known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument on behalf of Sierra Homebuilders, LLC, a Utah limited liability company, and who acknowledged to me that said entity executed it.



Joan Chadwick  
NOTARY PUBLIC

**EXHIBIT "A"**

**Legal Description of the Townhome Community**

All of Lots 1-21 River Valley Phase 8, according to the official plat thereof on file in the official records of the Box Elder County Recorder's office.

**BOUNDARY DESCRIPTION**

Part of the Southeast Quarter of Section 5, Township 11 North, Range 3 West of the Salt Lake Baseline and Meridian described as follows:

Commencing at the Southeast Corner of Section 5, Township 11 North, Range 3 West of the Salt Lake Baseline and Meridian monumented with a Railroad Spike thence N00°32'10"E 1337.82 feet along the section line; thence West 1316.24 feet to the Northeast Corner of 160 of the River Valley Subdivision, Phase 6 recorded in the Box Elder County, Utah Recorder's Office on August 13, 2009 under Entry No. 282090 said point being the POINT OF BEGINNING and running

thence S 00°40'22" W 271.35 feet along the west line of Terry Johnson Subdivision;

thence along the north right of way line of BR Mountain Road the next two courses:

1) thence Westerly, a distance of 74.38 feet along a non tangent curve to the left of which the radius point lies S 05°17'25" E with a radius of 1,658.00 feet, having a central angle of 02°34'13" and a chord that bears S 83°25'28" W 74.37 feet;

2) thence Westerly, a distance of 228.31 feet along a reverse curve to the right having a radius of 1,567.70 feet and a central angle of 08°20'39" and a chord that bears S 86°18'41" W 228.11 feet;

thence N 00°29'09" E 270.23 feet;

thence S 89°30'51" E 133.07 feet along the boundary of River Valley Subdivision, Phase 6, Lot 161 Amendment 2 recorded in the Box Elder County Recorder's Office under Entry No. 406388 on January 17, 2020;

thence S 89°30'51" E 66.00 feet to the east right of way line of 2650 West Street;

thence N 00°12'35" E 26.57 feet along said right of way line;

thence S 89°40'25" E 103.25 feet along the boundary of River Valley Subdivision, Phase 6, Lot 160 Amendment recorded in the Box Elder County Recorder's Office under Entry No. 406387 on January 17, 2020 to the point of beginning, containing, 1.87 acres, more or less

## EXHIBIT "B"

## EXHIBIT "C"

### Bylaws of River Valley HOA, Inc.

*Capitalized terms used but not defined in this document are as defined by the Declaration and/or applicable law.*

- 1. Principal Office.** The River Valley HOA, Inc. ("Association") may have such other offices within the State of Utah, as the Board may designate or as the business of the Association may require from time to time.
- 2. Registered Office and Agent.** The Board may designate the registered agent of the Association and may change such designation from time to time.
- 3. Annual Member Meetings.** The first annual meeting and subsequent annual meetings of the Association will be held at a time and in a month specified by the Board.
- 4. Special Member Meetings.** A special meeting of the Association may be called at any time by at least two members of the Board, or by the president of the Association, or by the Members upon the written request of at least 30% of the voting interest of the Association. A special meeting may only be held for the purposes set forth in the notice for that special meeting.
- 5. Place of Member Meetings.** The Board may designate any place in Box Elder County as the place for any annual or special meetings of the Association.
- 6. Notice of Member Meetings.** Notice of each meeting stating the place, date, and time of the meeting and the purpose or purposes for which the meeting is called, will be delivered to each Member entitled to vote at the meeting, not less than 7 nor more than 90 days before the date of the meeting. If mailed, the notice will be deemed to be delivered when deposited in the United States mail, postage prepaid, and addressed to the Member at its address as it appears in the records of the Association. The Board may set a record date for determining the Members entitled to notice. The Association will give notice at the Association's expense of any special meeting called by the Members.
- 7. Quorum – Members/Owners.** Except as otherwise provided in the Declaration or these Bylaws, at any meeting of the members, the presence of members holding, or holders of proxies entitled to vote, more than fifty percent (50%) of the total votes of the Association shall constitute a quorum for the transaction of business. In the event a quorum is not present at a meeting, the members present (whether represented in person or by proxy), though less than a quorum, may adjourn the meeting to a later date. Notice thereof shall be delivered to the members as provided above. At the reconvened meeting, the members and proxy holders present shall constitute a quorum for the transaction of business.
- 8. Member Voting Method.** Votes may be cast in person, by proxy, or as determined by the Board, by written ballot.
- 9. Members' Voting Rights.** Subject to the provisions in the Declaration and the Articles of Incorporation, a Member shall be entitled to one (1) vote for each Parcel which he or it owns within the

Property, and the Declarant, if any, shall be entitled to the number of votes accorded to such Declarant as provided in the Declaration.

**10. Voting by Joint Owners.** In the event there is more than one (1) owner of a particular Parcel, the vote relating to such Parcel shall be exercised as such Members may determine among themselves. A vote cast at any Association meeting by any of such Members, whether in person or by proxy or through ballot, shall be conclusively presumed to be the vote attributable to the Parcel concerned, unless an objection is immediately made by another Member of the same Parcel. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

**11. Resolution of Voting Disputes.** In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of Members at a meeting, the Board shall act as arbitrators and the decision of a disinterested majority of the Board shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with Utah law.

**12. Suspension of Voting Rights.** The Board may suspend the voting rights of any Member for any period during which an assessment remains unpaid. Unless provided otherwise in the Declaration, the Board may also, after notice and hearing, suspend the right of the Member to use the Common Area and facilities during and for up to sixty (60) days following any breach by such Member or occupant of any provision of the Declaration or of any rule or regulation adopted by the Association unless such breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues and up to sixty (60) days thereafter.

**13. Action by Proxy.** Every proxy must be executed in writing by the Member or its duly authorized attorney-in-fact and filed with the secretary of the Association before or at the time of the meeting. No proxy will be valid after the expiration of one year from the date of its execution unless otherwise provided in the proxy.

#### **14. Action by Written Ballot.**

(a) Any action that may be taken at any meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter. Such written ballot will set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot will be valid only when the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot. Members submitting a written ballot will be considered to have participated in the meeting for all purposes.

(b) All solicitations for votes by written ballot will: 1) indicate the number of responses needed to meet the quorum requirements; 2) state the percentage of approvals necessary to approve each matter other than election of Directors; 3) specify the time by which a written ballot must be received by the Association in order to be counted; and 4) be accompanied by written information sufficient to permit each Member casting a written ballot to reach an informed decision on the matter.

- (c) A written ballot may not be revoked.
- (d) Action by written ballot will have the same effect as action taken at a meeting.
- (e) The number of votes cast by written ballot will constitute a quorum for action on the matter.
- (f) A written ballot may also be used in connection with any meeting of the Association,

thereby allowing Members the choice of either voting in person or by written ballot delivered by a Member to the Association in lieu of attendance at such meeting. A valid written ballot will be counted equally with the votes of Members in attendance at any meeting for every purpose.

**15. Order of Business.** The order of business at any meeting of Members shall be as follows:

- (a) roll call to determine the voting power represented at the meeting;
- (b) proof of notice of meeting or waiver of notice;
- (c) open forum giving Members an opportunity to be heard;
- (c) election of Directors, if applicable;
- (d) report of finances; and
- (e) any other Association business.

**16. Expenses of Meetings.** The Association shall bear the expenses of all Regular and Annual Meetings of Members and of Special Meetings of Members.

**17. Waiver of Notice.** A Member may waive any notice required by the Act or by these Bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. A waiver shall be in writing, signed by the Member entitled to the notice, and delivered to the Association for inclusion in the minutes; or filing with the corporate records. The delivery and filing required above may not be conditions of the effectiveness of the waiver. A Member's attendance at a meeting:

- (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and
- (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

**18. Number, Election, Term of Directors.** The Board will consist of three Directors. Directors will be elected at the annual Member meetings by a plurality of votes, that is, the candidate(s) with the most votes shall be elected. Nomination for election must be made first by a Nominating Committee. The Nominating Committee will consist of a chairperson, who must be a currently serving Director, and at least two other Members (who may or may not be Directors). The Board will appoint persons to serve on the Nominating Committee, from time to time as determined by the Board. The Board may determine all additional procedures and requirements relating to the conducting of elections for Director positions.

**19. General Powers.** The property, affairs, and business of the Association shall be managed by the Board. The Board may exercise all of the powers of the Association, whether derived from law, the Article of Incorporation, these Bylaws, or the Declaration, except those powers which are by law or by the foregoing documents vested solely in the members. The Board shall among other things, prepare or cause to be prepared, plan and adopt an estimated annual budget for the estimated annual common expenses, provide the manner of assessing and collecting assessments, and keep or cause to be kept sufficient books and records with a detailed account of the receipts and expenditures affecting the Property and its

administration, and specifying the maintenance and repair expenses of the Common Areas. The books and records shall be available for examination by all members at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting procedures. The Board may by written contract delegate, in whole or in part, to an officer and/or a professional management organization or person such of its duties, responsibilities, functions, and powers as are properly delegable.

**20. Compensation - Directors.** No Director shall receive compensation for any services that he or she may render to the Association as a Director: provided, however, that a Director may be reimbursed for expenses incurred in performance of his or her duties as a Director to the extent such expenses are approved by the Board and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his or her capacity as a Director.

**21. Resignation, Removal or Death.** A Director may resign before the expiration of his or her term by giving written notice to the president or to the secretary of the Association. Such resignation will take effect on the date specified in the notice. Upon the resignation or death of a Director, the remaining Directors will appoint a replacement Director to serve until his successor is elected. Any Director (other than a Director appointed by the Declarant) may be removed at any time, for or without cause, by the affirmative vote of the Members holding more than fifty percent (50%) of the total number of votes appurtenant to all Parcels in the Property, at a special meeting of the members duly called for such purpose.

**22. Board Meetings.** Meetings of the Board will be held at least annually, and at any time when called by the president of the Association or by two or more Directors, upon the giving of at least two business days' prior notice of the time and place of the meeting to each Director by hand-delivery, email, text, or any other manner deemed fair and reasonable by the Board. Any business may be transacted at a Board meeting. No notice of a Board meeting need state the purposes for holding the meeting, and no notice of any adjourned Board meeting will be required. If the Board establishes a regular meeting schedule, then such regular meetings of the Board may be held without notice of the date, time, or place of the meeting to the other Directors. Directors may choose to attend any meeting virtually or by electronic means.

**23. Place of Meetings.** The Board may designate any location in Box Elder County convenient to the Directors in which to hold a Board meeting. Directors may participate in any Board meeting by means of any electronic or telephonic communication by which all participants may simultaneously hear one another during such meeting. Directors who participate in a Board meeting by such means will be considered present for all purposes, including the presence of a quorum.

**24. Quorum - Directors.** A majority of Directors will constitute a quorum for the transaction of business, but a lesser number may adjourn any Board meeting from time to time. When a quorum is present at any Board meeting, a majority of the Directors in attendance will decide any question brought before such meeting.

**25. Waiver of Notice.** Before, at, or after any Board meeting, any Director may, in writing, waive notice of such meeting and such waiver will be deemed equivalent to the giving of such notice. Attendance by a Director at a Board meeting will constitute a waiver of notice by such Director except when such Director attends the meeting for the express purpose of objecting to the transaction of business based on a claim that the meeting was not duly called or convened.

**26. Informal Action by Directors.** Any action required or permitted to be taken at a Board meeting may be taken without a meeting (e.g., via email or text correspondence) if each Director in writing either:

(1) votes for the action, or (2) votes against the action, or (3) abstains from voting and waives the right to demand that action not be taken without a meeting.

**27. Officers.** The Officers shall be appointed by the Board. The Officers of the Association shall be a president, a vice president, and a secretary/treasurer. The Board may appoint such other Officers, assistant Officers, committees, and agents, including assistant secretaries and assistant treasurers, as it may consider necessary or advisable, who will be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any Officer, agent, or employee are not prescribed by these Bylaws or by the Board, such Officer, agent, or employee will follow the orders and instructions of the president.

**28. Removal of Officers.** The Board may remove any Officer at any time, for any reason, with or without cause.

**29. Vacancies.** A vacancy in any office will be filled by the Board for the unexpired portion of the term.

**30. President.** The president will be the chief Officer of the Association. The president will preside at all Association meetings and Board meetings. The president will have the general and active control of the affairs and business of the Association and general supervision of its Officers, agents, and employees. The president is designated as the Officer with the power to prepare, execute, certify, and/or file duly authorized and approved amendments to the Articles of Incorporation, Bylaws, and the Rules and Regulations on behalf of the Association.

**31. Vice President.** The vice president will assist the president and will perform the duties assigned to him by the president or the Board. In the absence of the president, the vice president will have the powers and perform the duties of the president.

**32. Secretary/Treasurer.** The Secretary/Treasurer will:

(a) keep, or cause to be kept, the minutes of the proceedings of Association meetings and Board meetings;

(b) see that all notices are duly given in accordance with the provisions of these Bylaws;

(c) maintain the records of the Association;

(d) perform all other duties incident to the office of secretary and the duties assigned to her or him by the president or the Board;

(d) be the principal financial Officer of the Association and will have the care and custody of all funds, securities, evidences of indebtedness, and other personal property of the Association;

(e) receive and give receipts and acquittances for moneys paid in on account of the Association and will pay out of the funds on hand all bills, payrolls, and other just debts of the Association upon maturity;

(f) perform all other duties incident to the office of treasurer and, upon request of the Board, make such reports to it as may be required at any time;

(g) if required by the Board, give the Association a bond for the faithful performance of his duties and for the restoration to the Association of all books, papers, vouchers, money, and other property in his possession or under his/her control belonging to the Association; and

(h) have such other powers and perform such other duties assigned to her or him by the president or the Board.

**33. Compensation – Officers.** No officer shall receive compensation for any services that he or she may render to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of his or her duties as an officer to the extent such expenses are approved by the Board and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his or capacity as an officer.

**34. Owner Contact Information.** Each Member is required to register a phone number capable of receiving and transmitting text messages, a mailing address, and an email address with the Association within ten (10) days after becoming a Member. Upon purchasing a Parcel in the Townhome Community, each Member shall promptly furnish to the Association a certified copy of the recorded instrument by which Membership of such Parcel has been vested in such Member, which copy shall be maintained in the records of the Association. The contact information of each Member will be kept in the records of the Association. Members must notify the Association of any change in contact information within ten (10) days after the change. Any notice delivered to an Member's registered information or—if the Member fails to register an address with the Association—to the address on file with the County Recorder, will be deemed duly delivered.

**35. Affairs, Electronic Means.** Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the member if the Board does so in good faith and has no reason to believe it is not the act of the member. A writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by a Member or by the Association.

**36. Notice.** In any circumstance where notice is required to be given to the homeowners, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable. A homeowner may require the Association, by written demand, to provide notice to the homeowner by mail. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring members to furnish the Association with a current email address.

**37. Indemnification – Third Party Action.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director or officer of the Association, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and with

respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association or with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his conduct was unlawful.

**38. Indemnification – Association Action.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association by reason of the fact that he is or was a Director or officer of the Association, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association; provided, however, that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or intentional misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability and in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

**39. Insurance.** The Association may purchase and maintain insurance on behalf of any person who was or is a Director officer, employee, or agent of the Association, or who was or is serving at the requests of the Association as a Director, officer, employee, or agent of the Association, or who was or is serving at the request of the Association as a Director, officer, employee, or agent of another corporation, entity or enterprise (whether for profit or not for profit) against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to Bylaws shall constitute expenses of the Association and shall be paid with funds from the assessments collected from the members, as referred to in the Declaration.

**40. Rules and Regulations.** The Board may from time to time, adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Property; provided, however, that such rules and regulations shall not be inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration, or these Bylaws. The members shall be provided with copies of all rules and regulations adopted by the Board, and with copies of all amendments and revisions thereof.

**41. Books and Records.** The Association shall keep, maintain and provide access to its records as required by applicable law.

**42. Annual Report.** The Board shall cause to be prepared made available to each Member an annual report containing: (a) an income statement reflecting income and expenditures of the Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year, (c) a statement of changes in financial position for such fiscal year, and (d) a statement of any changes to the place of the principal office of the Association where the books and records of the Association, including a list of names and addresses of current Members, may be found.

**43. Enforcement.** In the event of an alleged violation by a Member or Occupant ("Respondent") of the Declaration, these Bylaws, or the Rules and Regulations of the Association, the Board, Association and/or Members shall have the right to enforce these Bylaws and other governing documents of the

Association, in the manner provided within these various documents or in any manner available at law or in equity.

**44. Amendment.** Except as limited by law, these Bylaws may be amended by approval of at least a majority of the Board of Directors as constituted at any time.

*[End of Bylaws]*